

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

**BRUCE ADDINGTON
DONNA ADDINGTON, and
ROBERT ADDINGTON**

Plaintiffs,

v.

**Civil Action No. 2:12-cv-6404
Honorable John T. Copenhaver, Jr.**

**RALEIGH MINE AND
INDUSTRIAL SUPPLY, INC. and
STIRL RICHARDS SMITH,**

Defendants.

AGREED PROTECTIVE ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, and with the approval of this Court, the parties have stipulated to and agreed to be bound by the terms of this Agreed Protective Order. Due to the highly confidential, private and proprietary information which will be discoverable in this case and to avoid unnecessary disputes before this Court, it is hereby **ORDERED** as follows:

1. This Agreed Protective Order applies to all documents, materials and information identified and marked or designated by any party as confidential during the pendency of this litigation, and to all materials derived therefrom and/or copies made thereof unless and until this Court specifically rules otherwise. With regard to copies, each party shall Bates Stamp and keep a log of all copies made by it or her of the other party's confidential documents or materials, so that all such copies are returned pursuant to paragraph 10 hereof.

2. Any party may designate as confidential any documents produced, any answers to interrogatories or other discovery requests, or any portion of deposition testimony or deposition

exhibits in this action by writing, typing or stamping on the face of such document, answer to discovery request, or deposition transcript the term "confidential," or by otherwise notifying counsel for the opposing party in writing. In the case of deposition transcripts and exhibits, the court reporter also shall be notified.

3. Persons receiving or obtaining access to confidential information protected under this order may use such information solely for the purpose of preparing for and conducting this litigation or any appeal(s) therefrom. Any and all other uses are prohibited.

4. Only the following individuals, subject to compliance with Paragraph 5, shall have access to confidential information protected by this Order: (a) the parties and their counsel of record; (b) legal assistants and secretaries reporting indirectly to the parties' counsel; (c) the Court and its staff; and (d) expert witnesses employed by the parties.

5. If a party or counsel of record wishes to disclose any document or other material which is identified or marked as confidential, or the contents thereof, to any person actively engaged in working on this action (e.g., paralegal, secretary, associate, expert witness, consultant), the person making the disclosure shall do the following:

- a. Provide a copy of this Protective Order to the person to whom disclosure is made;
- b. Inform the person to whom disclosure is made that he or she is bound by this Protective Order;
- c. Require the person to whom disclosure is made to sign an acknowledgment and receipt of this Protective Order;
- d. Instruct the person to whom disclosure is made to return any document or other material which is identified or marked as confidential at the conclusion of the case, including notes or memoranda made from confidential material;

- e. Maintain a list of persons to whom disclosure was made and the confidential materials which were disclosed to that person; and
 - f. At the conclusion of the action, gather the confidential materials, copies thereof, and related notes and memoranda, and return them to the party or attorney who originally disclosed them, with a certificate of compliance with the terms of this Protective Order.
6. If a party objects to the restrictions set forth above for any specific document identified or marked as confidential and protected by this Order, that party must raise the objection with opposing counsel. Only if an agreement cannot be reached may a party seek resolution of the matter with the Court. This Order shall be without prejudice to any party to challenge whether any particular information is in fact "confidential" or relevant to any issue in this case.
7. Any party may seek to modify this Order for good cause, but shall first attempt to resolve the issue with the other party by means of amendment to this Order.
8. All individuals receiving protected information under this Order are responsible for abiding by its terms. Plaintiff acknowledges that a failure by him to keep discovered information confidential could result in sanctions by this Court.
9. Prior to a party referring to confidential information protected by this Order in open court or attaching any such document(s) to any pleading or other filing, the party seeking disclosure shall file a motion with the Court in advance of any disclosure requesting the Court to impose any safeguards it deems necessary.
10. Within 30 days after the final disposition of this case, including appeal, all protected information shall be returned to the producing party along with any and all copies thereof.

11. A party whose confidential information is improperly disclosed or against whom this Order is otherwise violated shall be entitled to all remedies under law or equity, including but not limited to dismissal of this action, a judgment by default against the violating party, and monetary damages.

Entered this _____ day of _____, 2012.

Honorable John T. Copenhaver, Jr.

Agreed to by:

/s/Robert B. Allen

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